

Legal Briefs

Harassment and Discrimination

Participant's Desk Reference

Legal Briefs
Employment Law Training Series

*Harassment and Discrimination:
Promoting Respect and Preventing Discrimination*

Participant's Desk Reference

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FOR
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INTRODUCTION

Harassment and discrimination are probably two of the most well known legal issues managers face. Unfortunately, they are also the two areas where managers can get themselves in the most trouble. You would think that given the amount of publicity on this topic in newspapers and television that managers would be well versed in how to stay out of trouble, but that is not the case.

This desk reference contains critical information on the things you need to be aware of in terms of how harassment and discrimination impacts you as a manager, on a daily basis. It provides a complete review of the key information covered in the course, along with supplemental information regarding harassment and discrimination. Please keep this desk reference in your office as a permanent resource for information on harassment and discrimination.

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PRE-ASSESSMENT

Instructions: Read the statements and circle the appropriate response.

- 1. Quid pro quo sexual harassment literally means "this for that." This form of harassment involves a promise of better benefits, a promotion or a guarantee of continued employment in return for a sexual favor.

True or False

- 2. Hostile work environment only occurs when inappropriate pictures or jokes are present in the physical environment of the workspace.

True or False

- 3. If no one is complaining about the harassment, you don't have to report it.

True or False

- 4. If an organization winds up in court, the jury is asked to look at the conduct from a "reasonable person's" perspective.

True or False

- 5. If the person complaining about the harassment wants you to keep the information confidential and not report it, you have a moral obligation to respect their wishes.

True or False

- 6. Men harassing women is the most prevalent kind of harassment because women technically cannot harass men.

True or False

- 7. Managers or supervisors who date subordinates are subject to claims of quid pro quo harassment.

True or False

- 8. Having a comprehensive harassment policy pretty much guarantees that you and your organization will not be held liable in discriminatory cases.

True or False

- 9. If harassment is present and you know or should have known about it, your company may not represent you during a court case.

True or False

- 10. One important way for managers to stay out of court is to take every complaint seriously. Don't dismiss a complaint as frivolous or as someone being overly sensitive.

True or False

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KEY CONCEPTS & DEFINITIONS

1. Quid Pro Quo Sexual Harassment

Quid Pro Quo literally means "this for that." This form of harassment involves a promise of better benefits, a promotion or a guarantee of continued employment in return for sexual favors.

2. Hostile Work Environment Sexual Harassment

Hostile environment harassment occurs when the harassing behavior has the effect of making the work environment so unreasonably offensive or intimidating that the employee is unable to do the job effectively. Harassing behavior that causes a hostile environment can range from sexually suggestive jokes and pictures to unwelcome physical contact.

3. Report Harassing Conduct Even If No One's Complaining

A manager or supervisor has a duty to investigate and report harassing conduct whether or not anyone is complaining.

4. Reasonable Person

If and when an organization winds up in court, the jury will be asked to look at the conduct from the perspective of a "reasonable person." If it looks inappropriate or illegal to a reasonable person, then the manager has a duty to take care of it.

5. Don't Allow the Victim to Dictate Actions

This is the single biggest mistake management makes—letting the person making the complaint dictate what the next action should be. A manager's or supervisor's duty is to the workforce as a whole and if the manager doesn't investigate and remedy the situation, the harasser could be out there doing it to others.

6. Never Promise Absolute Confidentiality

While it is important to maintain confidentiality and only disclose information about the complaint to those who need to know, never promise confidentiality. Remember you are not betraying a trust by reporting an incident. You're fulfilling your responsibility as a manager—to your organization and your employees.

7. Make Sure You Give All Forms of Harassment Equal Attention

Harassment takes many forms and all harassment is illegal. Harassers and their victims can be of either gender or any sexual orientation.

8. Workplace Dating

Managers or Supervisors who date subordinates are subject to claims of quid pro quo sexual harassment. After the relationship ends, the subordinate could claim it was not consensual—saying they felt they had to engage in the relationship to keep their job.

9. Enforce Organizational Policy

Simply having a comprehensive policy does not guarantee that you and your company won't be held liable in discriminatory harassment cases. Yes, the policy should exist, but it also has to be enforced.

10. Personal Liability

You may personally be held liable for failing to take action on a harassment situation. If harassment is present and you know or should have known, your company may not represent you. In other words, you are on your own—you have to find a lawyer and you have to pay the legal fees. The organization can essentially walk away from the situation.

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THE FOUR ACTIONS

There are four action steps to help make sure you stay out of trouble regarding harassment and discrimination.

1. Always follow the rules

The first action you can take is to make sure your organization's rules and procedures concerning discriminatory harassment are followed...that means making sure everyone is aware of the prohibited conduct and consequences.

2. Observe actions and attitudes

The second action is to observe actions and attitudes. You should always be aware of what is going on in your work area. Are any employees exhibiting harassing behaviors? Do their coworkers seem put off by the behavior but are unable or unwilling to say anything? Remember, you have a responsibility to the entire workforce. If you know or should have known about the harassment and do nothing to remedy the situation, you could very well be liable if the action ever goes to court.

3. Investigate Every Complaint

Action three is to investigate every complaint—no exceptions. Don't dismiss a complaint as frivolous or as someone being overly sensitive. You must investigate complaints immediately and thoroughly. Be sure your investigation protects the privacy interests of both the alleged victim and offender as much as possible. Your goal should be immediate and appropriate prevention and corrective action.

4. Document your Actions

Action four is to document your actions. Be sure you document your findings without bias to one party or the other. Prior to interviewing third party witnesses, obtain signed and dated written statements from both parties. Take careful notes during all interviews on who, what, where, when and how of the incident. Finally, prepare a written report of the facts, but don't put your opinions or conclusions in writing.

Make sure the incident is reported through the appropriate channels so the management structure of your organization has a record of the complaint and can recognize and prevent any patterns of behavior that may be developing. And if you've got an issue you are not sure how to deal with, get help from your human resources department or legal counsel.

FAQS ABOUT HARASSMENT AND DISCRIMINATION**Q. What does the EEOC say about sexual harassment?**

A. *Sexual harassment is a form of sex-discrimination that violates Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and any other verbal or physical conduct of a sexual nature...when submission to or rejection of such conduct is used as the basis for employment decisions...or such conduct has the purpose or effect of...creating an intimidating, hostile working environment."*

Q. What is discrimination?

A. *Discrimination occurs when a person or group of people are treated differently from another person or group of people.*

Q. What is Title VII of the Civil Rights Act of 1964?

A. *Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, sex, religion, national origin, color, pregnancy, etc.*

Q. What is considered harassing behavior?

A. *First, the behavior must be unwelcome. The behavior can be very obvious or very subtle. The behavior can be verbal like jokes or inappropriate comments; or visual like pictures, or lewd gestures; or physical like pats, shoulder rubs, brushing up against someone on purpose; or written in the form of memos, letters, or e-mails.*

Q. What is the profile of the typical harasser?

A. *Actually, there is no profile for a typical harasser.*

Q. Is sexual harassment about sexual attraction?

A. *No. Sexual harassment isn't about sexual attraction. Sexual harassment is about the inappropriate use of power over another person.*

Q. If an employee consents to sexual activity and then files a sexual harassment claim, will the claim be thrown out due to initial consent?

A. *No. Consent to sexual activity doesn't mean that an employee can't file a sexual harassment claim. It is also not a defense the organization can use to avoid liability in a sexual harassment suit.*

Q. What do most people want when they file a sexual harassment complaint?

A. *Most people that file a sexual harassment complaint just want the behavior to stop.*

Q. Can your organization be held liable for harassment from someone outside the organization, like a vendor or customer?

A. *Yes. If an employee were to file a complaint regarding a customer or vendor, you should follow-up with the complaint just as you would if the person were an employee of your organization. Also, if your employees are harassing someone outside of your organization, you are responsible for their behavior in those situations as well.*

Q. What type of people get harassed?

A. *Anyone can be harassed. When sexual harassment first became an issue in the workplace, statistics showed women to be the most harassed group of employees. Currently, statistics find that there is just as much harassment of men and homosexual employees as there is harassment of female employees.*

NOTES

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FOR FURTHER INFORMATION

Here are some sources for additional information on harassment and discrimination:

Web Sites

The U.S. Equal Employment Opportunity Commission Home Page—
<http://www.eeoc.gov/>

Findlaw.com labor and employment law links—
<http://guide.biz.findlaw.com/01topics/27labor/index.html>

Telephone Numbers

Equal Employment Opportunity Commission
1-800-669-4000

Equal Rights Advocates
1-800-839-7372

National Job Problem Hotline
1-800-522-0925

National Victim Center
1-800-FYI-CALL

Addresses for Harassment and Discrimination Information

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20590

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POST-ASSESSMENT

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True or False

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True or False

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CERTIFICATION OF TRAINING

I understand the information presented in the course, *Harassment and Discrimination: Promoting Respect and Preventing Discrimination*. I have also completed the post-assessment for this course and reviewed the correct answers with my session facilitator or manager.

Employee's Signature	Date
Facilitator's or Manager's Signature	Date

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This Certification of Training may be included in your personnel file as a record of having successfully completed this training.